

# SECTION 504

## A Possible Service Option for Students with Disabilities



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**UtahStateUniversity**  
CENTER FOR PERSONS WITH DISABILITIES

This document was developed by the Technical Assistance for Excellence in Special Education (TAESE) Center, the technical assistance division of the Center for Persons with Disabilities, a University Affiliated Program at Utah State University.

The content of this document does not necessarily reflect the position or policy of the Office for Civil Rights or USU and no official endorsement should be inferred. This document is not intended to provide legal advice; always check with your school attorney.

This information could be made available in alternative format, including large print, Braille, audio tapes, or CD.

# OVERVIEW

Congress has enacted amendments to the Americans with Disabilities Act (ADA) and to key definitions we use with Section 504. These changes went into effect on January 1, 2009. The purpose of this information is to give a practical overview of Section 504 for parents, educators, and administrators. **This document addresses student issues, not employment.** The materials should assist educators in implementing Section 504 requirements, including the development of Section 504 accommodation plans for eligible children. Additional questions can be directed to the school district Section 504 Coordinator.

*Section 504 is a federal statute that prohibits discrimination based upon a disability. This document addresses some issues relating to subparts D and E of the regulations, which apply to preschool, elementary, secondary, charter, and post-secondary programs that receive federal money.*

**Section 504 covers eligible children, employees, and other individuals with disabilities** for accommodations that enable them to work or learn. Section 504 is what good teachers do for children with disabilities, making practical accommodations to “level the educational playing field” so children can benefit from their education. The great majority of academic accommodations should take place in the general education classroom. A school team knowledgeable of the person determines, with evaluation data, if the student meets the Section 504 eligibility criteria. The following is the definition of a disability under Section 504. Obligations for school districts start when federal funds are received.

## ELIGIBILITY

### **A STUDENT MAY BE CONSIDERED NEEDING ACCOMMODATIONS UNDER SECTION 504 IF THE STUDENT**

1. *Has a mental or physical impairment that substantially limits one or more of such person's major life activities.*

“Major life activities” include functions such as

- |           |                |                                 |                          |
|-----------|----------------|---------------------------------|--------------------------|
| —Learning | —Working       | —Caring for one's self          | —Standing                |
| —Walking  | —Breathing     | —Eating                         | —Reading                 |
| —Seeing   | —Hearing       | —Sleeping                       | —Concentrating           |
| —Speaking | —Lifting       | —Bending                        | —Performing manual tasks |
| —Thinking | —Communicating | —Operation of a Bodily Function |                          |

The above criteria need to be justified with good evaluation data and made by a school team, including the parents. Many children have impairments that **do not** substantially limit a major life activity.

2. *Has a record of such an impairment.*
3. *Is regarded as having such an impairment.*

The second and third prongs of the definition only become a factor if discrimination has occurred because of the “record” or “perception.” The first prong above is used to determine eligibility for Section 504 accommodations.

# SUGGESTED PROCESS FOR DETERMINING 504 ACCOMMODATIONS

Every school district has their own 504 Eligibility Process. The following is just a suggested process:

## EARLY INTERVENING

1. This process is given different names—Student Assistance Team and Teacher Assistance Team are examples.
2. If a child experiences educational difficulties, a team meets to discuss the concerns. **This is a general education responsibility.**
3. The team suggests research-based intervention strategies to help correct the difficulties. The primary function of the early intervening team is to offer assistance to teachers who are experiencing academic and/or behavioral problems with a student.
4. If the strategies are unsuccessful, the team can make a referral for evaluation to Section 504, special education, Title I, or other school programs. The same team can serve as the Section 504 committee. Many schools start with an evaluation for special education to rule out the possibility of special education eligibility.

### —BEST PRACTICE—

*The parents should be involved throughout the process.  
The school should keep adequate written documentation.*

## REFERRAL FOR EVALUATION

5. Referrals are accepted from parents and the school. Ideally, **all referrals for special education or Section 504 should go through the early intervening team.**
6. The problem(s) and previous remedies are considered and reviewed. The summary should include all current information and recommendations.

## NOTIFICATION

7. The school notifies the parents or guardians, in writing, of the school's reason for and intent of conducting an evaluation. The notice should include a description of the evaluation and of procedural safeguards for parents.

## WRITTEN CONSENT

8. Securing written consent before the initial Section 504 evaluation should always be considered a best practice.

### —BEST PRACTICE—

*If the child has a learning difficulty or has attention problems, it might be wise to conduct a special education evaluation to rule out a learning disability or other disability in special education.*

## EVALUATION

9. The school evaluates all children with disabilities before making an initial placement or any subsequent, significant change in placement. Many schools evaluate a student for possible special education eligibility before considering Section 504. In some cases, like health care issues, the evaluation might have been completed by an outside agency.

## ELIGIBILITY

10. A recommended strategy is to use the early intervening team as the Section 504 team. The team, with the parents, meets and analyzes the evaluation data to determine if the student has a mental or physical impairment that substantially limits a major life activity. Section 504 accommodation should, to the maximum extent possible, occur in the general education environment.

## WRITTEN CONSENT

11. Securing written consent before the initial service should always be considered a best practice.

## ACCOMMODATION PLAN

12. Accommodations are designed to meet the unique needs of the student and are implemented in the general education classroom. If the student has a health care concern, the accommodation plan would be an Individualized Health Care and/or Emergency Plan.

## PLACEMENT FOR SERVICES

13. The accommodations are implemented in the general education environment. If a child is so severe they need to be educated in another environment, they might be eligible for special education.

## IMPLEMENTATION

14. The school staff makes the necessary accommodations to allow for the child's special learning and/or health care needs. Parents should be consulted and given opportunity for input regarding the accommodations.
15. The accommodations and/or services are implemented.

## REVIEW

16. Each child's accommodations and/or services are reviewed periodically.

—BEST PRACTICE—

*The team should review the accommodation plan at least annually.*



# SECTION 504 AND SPECIAL EDUCATION



*This section illustrates some of the basic similarities and differences between Section 504 and special education.*

*Remember, Section 504 should be a general education management responsibility.*





## COMPARISON

| ISSUES                | SECTION 504   | INDIVIDUALS WITH DISABILITIES<br>EDUCATION ACT—2004  | AMERICANS WITH<br>DISABILITIES ACT   |
|-----------------------|---|--|--|
| <b>Type</b>           | A Civil Rights Law  | An Education Act   | A Civil Rights Law   |
| <b>Title</b>          | The Rehabilitation Act of 1973  | The Individuals With Disabilities<br>Education Improvement Act (IDEA)  | Americans With Disabilities<br>Act of 1990 (ADA)   |
| <b>Purpose</b>        | Is a civil rights law that protects the rights of individuals with disabilities in programs and activities that receive federal financial assistance from the U.S. Department of Education.   | Is a federal funding statute whose purpose is to provide financial aid to States in their efforts to ensure a free appropriate public education for students with disabilities.  | Provides a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.   |
| <b>Responsibility</b> | General education, but shared with special education  | Special education, but shared with general education   | Public and private schools, business establishments, and public buildings (services)   |
| <b>Funding</b>        | State and local responsibility (no federal funding)   | State, local, and federal IDEA funds. IDEA funds cannot be used to serve students eligible only under Section 504.   | Public and private responsibility (no federal funding)   |
| <b>Administrator</b>  | Section 504 coordinator (Systems with 15 plus employees) to coordinate efforts to comply with this law  | Special education director or designee   | ADA coordinator is required to coordinate efforts to comply with this law.   |
| <b>Service Tool</b>   | Accommodations and/or services  | Individualized Education Program (IEP). Some IEPs will include Section 504 accommodations necessary for success in the general classroom.  | Reasonable accommodations and legal employment practices   |
| <b>Population</b>     | Identifies person as disabled so long as she/he meets the definition of qualified persons with disabilities, i.e., has or has had a physical or mental impairment that substantially limits a major life activity or is regarded as disabled by others. | Identifies 13 qualifying conditions: autism, deafness, deaf-blindness, hearing impairment, mental retardation, multiple disabilities, orthopedic impairment, other health impairment, emotional disturbance, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment. | Identifies person as disabled so long as she/he meets the definition of a qualified person with disabilities; i.e., has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as disabled by others. |

| ISSUES                                   | SECTION 504  | INDIVIDUALS WITH DISABILITIES<br>EDUCATION ACT—2004  | AMERICANS WITH<br>DISABILITIES ACT  |
|--|--|--|---|
| <b>Eligibility</b>                       | A student is eligible so long as she/he meets the definition of a qualified person with disabilities, i.e., currently has or has had a physical or mental impairment that substantially limits a major life activity or is regarded as disabled by others. The student is not required to need special education services to be protected. | A student is only eligible to receive special education and related services if the multidisciplinary team determines that the student has a disability under one of the 13 qualifying conditions and requires special education services. | A person is eligible so long as she/he meets the definition of a qualified person with disabilities, i.e., currently has or has had a physical or mental impairment that substantially limits a major life activity or is regarded by others as having a disability. The student is not required to need special education services in order to be protected. |
| <b>Free Appropriate Public Education</b> | A student could receive accommodations in the general education setting.   | A student must first be eligible and need special education before they are entitled to a related service.   | Addresses education in terms of accessibility requirements. Requires private and public entities not to use employment practices that discriminate on the basis of a disability.  |
| <b>Accessibility</b>                     | Federal regulations regarding building and program accessibility require that reasonable accommodations be made.   | Requires that modifications must be made if necessary to provide access to a free appropriate public education.  | Requires that public programs be accessible to individuals with disabilities.   |
| <b>Undue Hardship</b>                    | Consideration is given for the size of the program, extent of accommodation, and cost relative to the total school budget.   | Budget and administrative convenience is never an excuse.  | Consideration is given to the size of the business and its budget, type of operation, and nature and cost of accommodation.   |
| <b>Procedural Safeguards</b>             | Both require notice to the parent or guardian with respect to identification, evaluation, and placement.   |  | Makes provisions for public notice, hearings, and awarding attorney fees.   |
| <b>Notice and Consent</b>                | Notice is required before a “significant change in placement.” Written consent would be considered a best practice.  | Written notice is required prior to any change in placement. Consent is required before the initial placement and reevaluation.  |   |

| ISSUES                      | SECTION 504  | INDIVIDUALS WITH DISABILITIES<br>EDUCATION ACT—2004   | AMERICANS WITH<br>DISABILITIES ACT  |
|-----------------------------|--|---|---|
| <b>Evaluations</b>          | Evaluation draws on information from a variety of sources in the area of concern. Decisions are made by a group knowledgeable about the student, evaluation data, and placement options. Requires written parental notice. Written parental consent is considered a best practice. Requires periodic reevaluations. Reevaluation is required before a significant change in placement. No provision is made for independent evaluations at district expense. The school district should consider other evaluations and information regarding the student.  | A full comprehensive evaluation is required assessing all areas related to the suspected disability. The student is evaluated by a multidisciplinary team. Consent is required before the initial evaluation is conducted. Requires reevaluations to be conducted at least every three years if determined appropriate by the team. A reevaluation is not required before a significant change in placement. However, most students covered by IDEA are also eligible under Section 504. Provides for independent educational evaluation. A due process hearing is available if the school and parent disagree on the need for an independent evaluation. | All schools should conduct or update their Section 504 evaluation regarding services, accessibility, practices, and policies to assure discrimination is not occurring with any individual with disabilities. |
| <b>Services</b>             | <p>When interpreting evaluation data and making service decisions, both laws require districts to do the following:</p> <ul style="list-style-type: none"> <li>• Draw upon information from a variety of sources.</li> <li>• Ensure that all information is documented and considered.</li> <li>• Ensure that the service decision is made by a group of persons including those who are knowledgeable about the student, disability, the meaning of the evaluation data, and placement options.</li> <li>• Ensure that the student is educated with his/her nondisabled peers to the maximum extent appropriate (Least Restrictive Environment—LRE).</li> <li>• Provide notice and evaluation before any change of services.</li> </ul> |   |   |
| <b>Review of Program</b>    | Accommodations should be reviewed periodically.  | An IEP review meeting is required at least annually or before any significant change.   |   |
| <b>Grievance Procedures</b> | Requires districts to provide a grievance procedure for parents, students, and employees.  | Does not require a grievance procedure. Complaint Procedures (SEA)  | Any school district shall adopt and publish grievance procedures for resolution of ADA complaints.  |

| ISSUES                      | SECTION 504   | INDIVIDUALS WITH DISABILITIES<br>EDUCATION ACT—2004  | AMERICANS WITH<br>DISABILITIES ACT  |
|-----------------------------|---|--|---|
| <b>Complaint Procedures</b> | An individual or organization may file a complaint with the Office for Civil Rights. An OCR complaint must be filed, in writing, within 180 days after the violation has occurred. In certain cases, OCR will consider complaints where more than 180 days have elapsed.  | A formal complaint process is required. Parents can file a complaint with the State. A decision must be provided within 60 days.                                 | An individual or organization may file a complaint with the Office of Civil Rights. An OCR complaint must be filed, in writing, within 180 days after the violation has occurred. In certain cases, OCR will consider complaints where more than 180 days have elapsed. |
| <b>Due Process</b>          | Both statutes require districts to provide impartial hearings for parents or guardians who disagree with the identification, evaluation, or placement of student with disabilities. School districts or parents can initiate due process hearings.<br><br>Requires that the parent have an opportunity to participate and be represented by counsel. Other details are left to the discretion of the local school district. Policy statements should clarify specific details.<br><br>Delineates specific requirements. |  | Due process hearings can be initiated by either party. The court may allow a reasonable attorney's fee for the prevailing party.  |
| <b>Mediation</b>            | Not required. However, mediation should always be suggested.  | Mediation is optional for the parents and should always be suggested.  | Not required. However, mediation should always be suggested.  |
| <b>Enforcement</b>          | Enforced by the U.S. Office of Civil Rights. Regional offices are located throughout the United States. The office is part of the U.S. Department of Education.   | Enforced by the U.S. Office of Special Education Programs. Compliance is monitored by the State Board of Education and the Office of Special Education Programs. | Enforced by the U.S. Office for Civil Rights under an agreement with EEOC.  |

# SECTION 504 FREQUENTLY ASKED QUESTIONS

The following questions are frequently asked regarding Section 504 school issues. These opinions do not necessarily reflect the position of the Office for Civil Rights or the U.S. Department of Education.

1. Are all schools required to adhere to Section 504?

**Yes.** All schools, including charter schools, that receive any federal financial assistance must comply with Section 504 of the Rehabilitation Act of 1973.

2. Who is responsible to implement Section 504 services?

Section 504 is a general education management responsibility.

3. Are schools required to have a Section 504 coordinator?

**Yes.** If the school employs 15 or more employees, they must designate a person to coordinate 504 services and protections.

4. Are children who are covered under IDEA always eligible for Section 504 protections?

**Yes.** A child who receives special education could have their civil rights violated.

5. Are children who are covered under Section 504 always eligible for IDEA services?

**No.** A child must be evaluated and found to be eligible for special education services.

6. How are students determined to be eligible for accommodations under Section 504?

Basically, a child is eligible for services and protections if the child has a disability that is substantially limiting and impacts a major life activity and they need accommodations to access educational opportunities. This is done by a school team familiar with the child, including the parent.

7. Where are most children who are eligible for Section 504 accommodations served?

Most children who are eligible for Section 504 are served in general education classrooms with proper accommodations developed by the Section 504 team.

8. What is the purpose of Prong 2: Record of an Impairment and Prong 3: Regarded as Having an Impairment of the Section 504 definition?

The second and third prongs of the definition are used to bring to our attention the fact that we should not discriminate against a person with a disability because of their record or our perception of them. Only Prong 1 is used to determine eligibility, namely the student must have a mental or physical impairment that substantially limits a major life activity and impacts education. Eligibility is determined by a team knowledgeable about the child, including the parent.

9. Do schools have to evaluate children for possible Section 504 eligibility?

Schools do have to evaluate children before determining their eligibility for services and before deciding which educational accommodations are appropriate. Many schools evaluate the child first for special education to rule out the possibility of a disability under IDEA.

10. Do schools have to develop an IEP on children who are Section 504 eligible only?

An IEP is not required; however, it is suggested that schools develop a written 504 accommodation plan for the child.

11. What would be the 504 documentation for a child with a special health care need?

An individualized health care plan and/or emergency plan. The school nurse should be involved.

12. Does a physician's diagnosis of ADD/ADHD automatically result in a child's eligibility for Section 504?

A physician's diagnosis should be considered as one piece of documentation when evaluating the child. However, a physician's diagnosis alone does not automatically result in eligibility for Section 504 accommodations. It might be wise to evaluate the child for other health impaired (OHI) in special education.

13. Do schools have to reevaluate children who are receiving Section 504 services and protections?

Schools are required to *periodically* evaluate children. Unlike IDEA, which requires a reevaluation every three years, Section 504 does not specify a time period. Best practice is annually and every three years.

14. Must schools get permission from parents before providing Section 504 services?

Schools are required to notify parents of an evaluation of the child for possible eligibility under Section 504.

15. Do schools have to label a child with a clinical category before providing protections under Section 504?

Unlike IDEA, Section 504 does not require a specific label before eligibility is established and accommodations are provided. It must be demonstrated that a physical or mental impairment exists that substantially limits a major life activity.

16. Do children with disabilities have to be included in all school activities?

Children with disabilities must be given the opportunity to participate in activities that the school makes available for other children. They cannot be denied participation in extracurricular activities because of a disability.

17. Do schools have to make all of their buildings accessible to children with disabilities?

Programs and services must be readily accessible and useable for children with disabilities.

18. What can parents do if they are dissatisfied with the way schools are serving children eligible for Section 504 protections?

Parents should try to resolve differences with the school through open communication. A parent could even ask if mediation services are available. A parent does have the right to file a grievance with the school or a complaint with the U.S. Office for Civil Rights or request an impartial due process hearing if they believe their child's civil rights are being violated.

19. Can children served under Section 504 receive related services, such as a health care procedure?

If a team determines through evaluation that a child has a mental or physical impairment that substantially limits a major life activity, a related-service-only situation might apply in certain cases.

20. Is there any federal funding for schools to use to provide accommodations under Section 504?

There are no federal funds associated with serving eligible Section 504 children. Any costs for accommodations should be paid through the school general education budget.

21. Can children who are eligible for Section 504, but not IDEA, be served in special education classrooms?

This would be a very rare situation. If a child is so severe they need to be served in a special education classroom, then maybe IDEA eligibility should be revisited.

22. If a child can be served under either special education or Section 504, which should the school attempt to use to serve the child?

The decision needs to be made by a team, including the parent. The child must meet the eligibility criteria, regardless of whether they are IDEA or Section 504.

23. Is Section 504 age-specific, like IDEA, which only deals with children through a certain age?

**No.** Section 504 also applies to postsecondary programs that receive federal funding.

24. Can schools use any tests they want when evaluating children for Section 504 services?

While Section 504 is not specific about how to evaluate children for services, it does require that schools obtain information from a variety of sources and requires that nondiscriminatory teaching methods be used when children are evaluated using test instruments.

25. Do Section 504 records fall under FERPA protection?

**Yes.** Section 504 records are school records and are protected by the Family Educational Rights and Privacy Act (FERPA).

